U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

INDEX

File: A92 593 325 - San Antonio

Date: MAR 22 1999

In re: ELIGIO VAZQUEZ-GONZALEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas Hutchins, Esquire
6121 Lincolnia Road, Suite 303C
Alexandria, Virginia 22312

ON BEHALF OF SERVICE: Ellen Gallagher Holmes
Assistant District Counsel

CHARGE:

Notice: Sec. 237(a)(3)(B)(iii), I&N Act [8 U.S.C. § 1227(a)(3)(B)(iii)] - Conviction relating to violation of 18 U.S.C. § 1546

APPLICATION: Termination; cancellation of removal

The respondent, a lawful permanent resident, appeals the Immigration Judge's July 13, 1998, decision finding him removable as charged and ordering him removed from the United States to Mexico. The appeal will be sustained and the proceedings will be terminated.

The record indicates that the respondent was convicted, on November 26, 1991, of conspiracy to possess false immigration documents in violation of 18 U.S.C. § 1546(a) (Exh. 2; Tr. at 33-34). On June 3, 1998, the Immigration and Naturalization Service served the respondent with a Notice to Appear and charged him with removability pursuant to section 237(a)(3)(B)(iii) of the Immigration and Nationality Act. At a group hearing on July 13, 1998, the respondent explained that he and his co-defendant were convicted of dealing with false social security cards and alien registration receipt cards, but that neither of them dealt with any "visa-type" documents or entry permits (Tr. at 33-34). Nonetheless, the Immigration Judge found the respondent removable as charged, and the respondent appealed. On appeal, the respondent argues again that because the documents he conspired to possess did not involve "entry documents" as required by section 237(a)(3)(B)(iii) of the Act, he cannot be found removable under this section. We agree. See United States v. Campos-Serrano, 404 U.S. 293 (1971).

In order for the respondent to be found removable pursuant to section 237(a)(3)(B)(iii) of the Act, the Service must demonstrate, by clear, convincing, and unequivocal evidence, that the respondent has been convicted,

> (iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18, United States Code (relating to fraud and misuse of visas, permits, and other entry documents).

The record indicates that the respondent was convicted of conspiracy, pursuant to 18 U.S.C. § 371, to "commit fraud in connection with false identification documents, . . . false immigration documents, . . . (and) . . . false social security cards," in violation of, inter alia, 18 U.S.C. § 1546(a) (Exh. 2). As discussed above, the respondent testified that the immigration documents involved were alien registration receipt cards. No further information was presented regarding the underlying documents involved with the respondent's conviction. The statute itself, 18 U.S.C. § 1546 reads, in pertinent part, as follows:

> Whoever . . . possesses . . . any (fraudulent) visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States . . . shall be fined . . . or imprisoned. . .

18 U.S.C. § 1546. In United States v. Campos-Serrano, supra, the United States Supreme Court found that an alien registration receipt card could not be deemed an entry document for purposes of convicting a defendant under an earlier version of 18 U.S.C. § 1546. In so finding, the Court described the alien registration receipt card as follows:

> Its essential purpose is not to secure entry into the United States, but to identify the bearer as a lawfully registered alien residing in the United States. It is issued to an alien after he has taken up residence in this country. The card has been given a convenient, additional function as a permissible substitute for a visa or reentry permit in facilitating reentry into the United States by a resident alien. But, unlike a visa or a reentry permit, an alien registration receipt card serves this function in only a secondary way. Unlike a visa or reentry permit, it is not, by its nature, a 'document required for entry into the United States' under section 1546.

United States v. Campos-Serrano, supra, at 297. In 1971, at the time the Court decided this case, the possession of a counterfeit alien registration receipt card was not an act punishable under 18 U.S.C. § 1546. [1]

---

1 In 1971, 18 U.S.C. § 1546 read as follows:

> Whoever . . . knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, or other document required for entry into the United States . . . shall be fined not more than $2000 or imprisoned not more than 5 years, or both.

Subsequent to the Supreme Court's holding in United States v. Campos-Serrano, supra, Congress amended 18 U.S.C. § 1546 to include alien registration receipt cards. However, as the respondent argues on appeal, Congress' decision to amend 18 U.S.C. § 1546 does not alter the Court's characterization of alien registration receipt cards as non-entry documents. Moreover, the criminal actions taken by the respondent, and his consequent conviction pursuant to 18 U.S.C. § 1546, may not be construed as "relating to . . . visas, permits, and other entry documents" for purposes of section 237(a)(2)(A)(iii). Id.

In so finding, we are mindful of our recent decision in Matter of Ruiz-Romero, Interim Decision 3376 (BIA 1999), concerning the meaning of parenthetical language found at section 101(a)(43)(N) of the Act. However, we find the respondent's case distinguishable. Initially, we note that our discussion in Matter of Ruiz-Romero, supra, concerned a definitional section of the Act describing various categories of aggravated felonies, wherein Congress employed parentheticals as a method of description. Conversely, section 237(a)(3)(B) stands alone as a removal ground in the removability section of the Act, and it is less clear that we can employ, as we did in Matter of Ruiz-Romero, supra, the categorical approach to interpretation that we used to decipher the meaning of section 101(a)(43)(N). More importantly, however, the actual parenthetical language in section 237(a)(3)(B)(iii) has its origins in the heading of 18 U.S.C. § 1546 prior to its amendment in 1986. That is, prior to its amendment in 1986, the heading of 18 U.S.C. § 1546 read: "Fraud and misuse of visa, permits, and other entry documents." When the scope of 18 U.S.C. § 1546 was expanded in 1986, this heading was amended to substitute the term "other documents" for "other entry documents." Sec. 103(b) of Pub. L. No. 99-603, 100 Stat. 3359, 3380. Yet, the parenthetical used in 1990 when the Act was amended to include section 241(a)(3)(B)(iii) [2], which was redesignated as section 237(a)(3)(B)(iii) in 1996, incorporated the "other entry document" term, rather than the broader "other document" language. We cannot assume that this was done unintentionally, or that Congress, when drafting the original version of section 237(a)(3)(B)(iii) of the Act, was unaware that the United States Supreme Court had decided that an alien registration receipt card "is not, by its nature, a document required for entry into the United States under section 1546." United States v. Campos-Serrano, supra, at 297.

Thus, we find that the Service has failed to carry its burden of demonstrating the respondent's removability, and will sustain his appeal and terminate proceedings. [3]

---

2 See section 602 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.

3 Because we are terminating the respondent's proceedings, we will not address his alternative argument regarding relief from removal.

ORDER: The appeal is sustained.

FURTHER ORDER: The respondent's removal proceedings are terminated.

FOR THE BOARD